

October 16, 2009

TO: Mark Schulz

FROM: Teresa Parsons, SPHR
Director's Review Program Supervisor

SUBJECT: Mark Schulz v. Parks & Recreation Commission (PARKS)
Allocation Review Request ALLO-08-061

On July 9, 2009, I conducted a Director's review telephone conference regarding the allocation of your position. Present at the Director's review conference were you and your current supervisor, Christine Parsons, Eastern Region Parks Development Manager, as well as Human Resource Consultants Joe Vidales and George Price, representing PARKS.

Director's Determination

This position review was based on the work performed for the six-month period prior to October 31, 2007, the original date your management submitted the Classification Questionnaire (CQ) for your position. As the Director's designee, I carefully considered all of the documentation in the file, the exhibits presented during the Director's review conference, and the verbal comments provided by both parties. Based on my review and analysis of your assigned duties and responsibilities, I conclude your position is properly allocated to the Environmental Specialist 4 classification.

Background

On October 31, 2007, your previous supervisor, Parks Development Service Center Eastern Region Manager Mark Gillespie, submitted a CQ for your position (#465-1106) requesting reallocation to the Transportation Planning Specialist 3 classification (Exhibit A-4). The identical CQ was subsequently resubmitted with the request to allocate your position to the Environmental Planner 4 classification (Exhibits B-1-3). Your position is currently allocated to the Environmental Specialist 4 classification, and your current supervisor, Ms. Christine Parsons, and your managers support reallocation of your position to the Environmental Planner 4.

After reviewing the CQ submitted on October 31, 2007, Mr. Vidales determined the Environmental Specialist 4 was the correct allocation for your position. Subsequent to his

decision, Mike Allen, Capital Development Manager, who was your second-line supervisor acting as your direct supervisor after Mr. Gillespie's departure and prior to Ms. Parsons becoming your supervisor, reviewed and signed the CQ on April 18, 2008. Mr. Allen also included a note and Assessment of Observed Job Performance (Exhibit A-3). HR does not dispute the characterization of your assigned duties and responsibilities on the CQ.

On August 11, 2008, Mr. Vidales issued his allocation decision (Exhibit A-2). After the allocation decision was issued, your managers submitted a subsequent CQ to clarify the work assigned to your position (Exhibit B-7). Mr. Vidales reviewed the subsequent CQ but still concluded the ES 4 position was the best fit for your position (Exhibit B-8). Mr. Vidales concluded the written designation assigned to your position fit the technical expert. However, he did not believe your position had been delegated the responsibility of dealing with outside entities regarding major new initiatives or major modifications to existing laws, policies, or program planning needs. Instead, Mr. Vidales determined the written designation supported your work as a technical expert encompassed by the ES 4 classification.

On September 10, 2008, the Department of Personnel received your request for a Director's review of PARKS' allocation determination. The following summarizes your viewpoint, as well as your employer's.

Summary of Mr. Schulz's Perspective

Mr. Schulz contends the long range planning duties assigned to his position fit within the EP 4 classification. Mr. Schulz indicates a portion of those duties includes acting as the State Environmental Policy Act (SEPA) Responsible Official (RO) for park master plans. Mr. Schulz emphasizes that his position has been assigned written designation as the SEPA RO in two places: the CQ and a memo from Chris Regan, Environmental Program Manager in Parks Development Service Center, which reaffirms his formal designation as Agency SEPA RO (Exhibit C-2). Mr. Schulz points out that his managers requested the reallocation and recognized the level of responsibility assigned to his position. Mr. Schulz asserts the official focus of his position deals with non-project, long term planning, as well as planning for specific projects. He contends there is continuing decentralization in PARKS with the impact of more planning being shifted to the regions. Mr. Schulz indicates he is responsible for a large geographical area that includes the Eastern Region, as well as parts of King and Skamania counties. Mr. Schulz asserts his level of responsibility and leadership for more than 56 state parks fit within the EP 4 classification.

Summary of Parks' Reasoning

PARKS does not dispute the description of work outlined on the CQ. PARKS also acknowledges that some of Mr. Schulz's responsibilities as the SEPA RO may fall within the EP 4 classification. PARKS recognizes Mr. Schulz as a section expert but contends the majority of work assigned to Mr. Schulz's position is in line with the ES 4 classification. PARKS recognizes Mr. Schulz works with outside entities such as the Department of Fish & Wildlife or Department of Transportation to streamline the planning process. However,

PARKS indicates Mr. Schulz's position does not perform work for new legislation. Instead, PARKS indicates that level of work has been assigned to the Environmental Program Manager. PARKS further indicates that Mr. Schulz's position has not been tasked with developing major new initiatives the majority of the time. PARKS views the level of responsibility assigned to Mr. Schulz's position as project management rather than policy or law. PARKS also asserts the regulatory duties assigned to Mr. Schulz's position better fit within the ES 4 class. While some of Mr. Schulz's work may fall within EP 4 level work, PARKS contends Mr. Schulz performs ES 4 work the majority of the time.

Rationale for Director's Determination

The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

Duties and Responsibilities

The CQ submitted for reallocation summarizes your position's duties and responsibilities as follows (Exhibit A-4 and B-1-3):

Acts as a senior program technical and historical expert on environmental, regulatory, and land use issues and policies critical for the successful implementation of the most controversial, complex, and sensitive capital and operating projects, including multi-modal transportation linear trails.
Responsible for the supervision, preparation, and review of environmental documentation and permits needed for construction of capital and operating facilities.

During the Director's review conference, both you and your supervisor, Ms. Parsons, indicated the primary purpose of your position is to ensure that consistency occurs in the planning process of capital projects affecting state parks. Your position serves as a regulatory expert ensuring consistency through the planning and permitting processes for the construction of park facilities, buildings, and utilities and transportation infrastructures. Besides ensuring consistency in planned park zones, you ensure the agency understands development regulation plans, designations, and zoning so that projects are in compliance and agency decision makers understand the impact of both non-project (policy and plans) as well as specific project development actions.

Ms. Parsons described your duties as comprehensive planning efforts in land use planning to ensure projects occur in a timely manner. Ms. Parsons also indicated that your work involves policy level coordination with city, county, tribal, state, and federal, as well as internal decision makers. Ms. Parsons expressed her belief that the majority of regulatory

work you perform with local, federal, and tribal governments as it relates to long range planning better fits within the EP 4 class. Ms. Parsons indicated that the work assigned to your position is more comprehensive than described by the ES 4 class and noted that your work with internal and external groups, including special interest groups, assists in the agency's decision making process regarding capital projects.

The following summarizes the work assigned to your position, as described on the CQ (Exhibit A-4 and B-1-3).

35% Develops, negotiates, supervises and manages multi-year/multi-biennium, on-call environmental and cultural resources consultant contracts, including:

- Personal Service Contracts
- Purchases service agreements
- Memoranda of Agreements
- Interagency Agreements
- A/E contracts
- Other specialized contracting documents

Acts as the designated contract representative and coordinates, directs, and supervises the work of professional consultants performing critical and complex environmental research, documentation, and permitting tasks necessary for construction of capital and operating facilities.

The subsequent CQ describes the above section as 45% and further describes your position as the senior level environmental program staff for capital and operating projects, environmental and land use policies and plans within the Eastern Region. In that capacity, the CQ indicates your position coordinates all functional component requirements of agency SEPA (State Environmental Policy Act) compliance (Exhibit B-7). During the Director's review conference, Ms. Parsons noted that your lead responsibilities on the program work above are also performed in combination with your SEPA responsibilities.

25% Supervises, mentors, and trains environmental and other staff regarding environmental policy, environmental planning, land use, and regulatory functions, including:

- State Environmental Policy Act (SEPA)
- National Environmental Policy Act (NEPA)
- National Historic Preservation Act (NHPA)
- The federal Clean Water Act (CWA)
- The federal Endangered Species Act (ESA)
- Section 4(f) of the Transportation Act of 1966
- Washington State Department of Transportation (WSDOT) Local Agency Guidelines and Federal Highways Administration (FHWA) transportation policies and guidelines

- WSDOT Environmental Procedures Manual
- The federal lands proprietary approval and environmental requirements.

Coordinates, supervises, leads, and at times prepares, land development applications, including rezoning requests to county and city governments to bring PARKS' existing and proposed development and use into compliance with the following:

- Growth Management Act (GMA) and other acts and regulations promulgated under the acts.

Executes the following applications/documents:

- Joint Aquatic Resource Protection Applications
- WSDOT/FHWA Environmental Classification Summary (ECS) and supporting documents.

Acts as the environmental compliance officer and as delegated agency landowner for giving proprietary approval on public/private partnership projects.

Ensures agency engineering, archeology, planning, lands public/private partnership parties, operations and capital project leaders and other staff are aware of and respond to the following:

- Project work windows;
- Environmental values;
- Mitigating measures;
- Land use regulations;
- Proposed legislation;
- New technologies and environmental data.

Ensures the individuals/groups identified above are aware of and respond to the above as related to capital/operating construction, stewardship, repair/maintenance, transportation, and other proposals during the preparation of capital program/operating program budget proposals prior to design to ensure consistency with local, state, and federal ordinances, regulations, and laws.

Develops budget and critical path estimates for use by agency planning and design processes. Researches environmental and land use regulations and offers expertise and advice to agency management as to their effects on State Parks' proposals.

During the Director's review conference, you explained that you consider the significant impact of an action and how to mitigate the action, if necessary. You stated that you have the authority to either mitigate or deny a proposed action. It is also undisputed that your position may be required to defend an agency action. As a result, your position requires a good understanding of state and federal environmental laws.

15% Acts as an agency designated "Responsible Official" and/or "Decision Maker" under the SEPA for official Environmental Declarations. Reviews, approves, supervises, and at times prepares:

- Environmental Checklists;
- Draft and Final Environmental Impact statements;
- Scoping notices;
- Notices of Action Taken;
- Addenda;
- Emergency Exemptions.

The above documents are reviewed, approved, supervised, and prepared as needed for capital, operating, and management projects/proposals (Exhibits C-4-14).

During the Director's review conference, you described the SEPA RO as having the official role with major new program initiatives for capital projects in state parks, such as trails, parks, or camp sites for multi jurisdictional projects. You also indicated that a project can take years to complete from permit to land use. Ms. Parsons added that you may deal with program issues that can last for years.

You explained the stages of a project begin with a review of local government plans, goals, and policies that govern the development and use of PARKS' plans. You also indicated that you work with local governments early in the process so when PARKS becomes involved, the agency is in compliance with adopted ordinances. You stated you may also work with them on developing policy issues as it relates to PARKS. You explained the next step of a project includes the review of site specific zoning of a property and how that affects PARKS' future use of the property, followed by an internal review by the PARKS' Commission. Once a site plan is adopted and actions identified, the plan is implemented. Your position ensures consistency with the local plan for use as well as compliance with regulations.

10% Consults with and advises affected agencies with jurisdiction, including Attorney Generals, Tribes, locals, state, and federal governments, on critical, high priority agency capital and operating projects.

Acts as an agency liaison with principal planning directors on the development of critical or controversial resource management plans, recreation plans, policies, or regulations.

- 5% Regularly represents the agency at public meetings, public hearings, legal proceedings, and conferences.
- 5% Serves as the agency's designated wetland specialist for Eastern Washington.

The remaining 5% of assigned work includes coordinating with other state agency programs, such as the Department of Natural Resources Natural Heritage Program; preparing expert testimony on behalf of PARKS; supervising, directing, or participating in informal environmental training sessions to educate other sections of the agency.

At the time of your request, you supervised an ES 3 position that provided support to your position, as well as an ES 2 position that performed operational duties such as working with permits. Your position has the responsibility to train, supervise, direct, and coordinate the permitting process. During the Director's review conference, you explained permits may be for planned maintenance or deferred maintenance projects or may go to a third party like a partnership group working to improve a particular site, such as a trail through a state park. You provided examples of the complex/legal documentation in your exhibit packet (Exhibits C-4-14). PARKS noted the exhibits you provided included work performed by a variety of positions, as well as your position. You agreed the documents in your exhibits represent a team effort.

Class Specifications

When comparing the assignment of work and level of responsibility to the available class specifications, the class series concept (if one exists) followed by definition and distinguishing characteristics are primary considerations.

The **Environmental Planner 4 definition** describes the position as "a senior level environmental planner responsible for a specifically defined program need as designated in writing by a program manager, equivalent or above." The distinguishing characteristics include the requirement of "written designation by a program manager . . . or above," and the majority of work involves dealing with "individuals/groups outside of the agency regarding major new initiatives/or major modification to existing laws, policies or program planning needs." The distinguishing characteristics also note that positions may supervise staff, but not as a majority of the duties assigned.

The work you perform with outside entities is a collaborative effort to ensure PARKS' current and future projects are in compliance. You also educate others about the significant impacts of regulations, legislation, federal and state environmental protection acts, and zoning issues to assist them in making decisions. While your position is responsible for serving as a SEPA RO and you work with local governments during the planning stages of a PARKS' capital project, your position is not responsible for planning the new policy initiatives or developing new or modifying existing policy a majority of the time.

Further, I acknowledge that planning is an element of your work because you collaborate with other groups and monitor compliance throughout the planning process of a project. However, the primary focus of your position involves serving as a senior program expert on regulatory and land use issues and advising/ informing agency decisions makers about laws, policies, and legislation that will impact agency projects. I also recognize that you have a great deal of specialized, technical knowledge and that some of your duties, such as your SEPA RO responsibilities, may fit within EP 4 level work. However, when considering the primary focus of your position, as described on the CQ, the majority of work involves directing, supervising, or preparing contracts; coordinating and supervising land development applications; acting as an environmental compliance officer; and ensuring agency managers are aware of regulatory issues impacting capital projects prior to investing time, effort, and money into the projects.

While examples of typical work identified in a class specification do not form the basis for an allocation, they lend support to the work envisioned within a classification. The EP 4 typical work statements include serving as a senior planner of significant new policy initiatives; development of significant new directions for existing policy; and significant program initiatives requiring policy level coordination and liaison with other state agencies, federal agencies, and/or local governments. When considering the EP 4 classification, I also reviewed prior decisions by the former Personnel Appeals Board (PAB). In Davis v. Dep't of Ecology, PAB Case No. ALLO-02-0033 (2003), the Appellant served as a lead planner responsible for managing shoreline planning functions. While the Appellant implemented policy initiatives, the Board determined his position did not meet the requirements of the EP 4 class, in part, because the majority of his work did not involve "creating 'major new initiatives' or making 'major modifications to existing laws, policies or program planning needs.'" It is clear you have a strong working knowledge of zoning issues and environmental laws and regulations, and you clearly provide input into the process. However, the written designation given to your position is more in line with the scope of work identified in the ES 4 classification.

The **Environmental Specialist 4 definition** describes the position as "a senior staff environmental specialist who independently acts as a section expert in one or more section subject areas as designated in writing by a program manager . . . or higher." The definition further indicates that a "section expert is assigned projects that are a high priority for the program." ES 4 positions train and mentor more junior staff and may serve as a section historical resource or testify as to historical interpretation of laws and regulations at legal or public hearings. Positions may also manage all the environmental regulatory and analyses functions of an agency.

While I recognize your technical expertise regarding the various environmental laws, the majority of work assigned to your position, as described on the CQ, is more consistent with the definition and typical work identified by the ES 4 class specification, including the following typical work examples:

- Serves in the teaching, training and mentoring of junior staff;
- Assigned responsibility for more complex and difficult projects and permits;

- Assigned multiple regulatory responsibilities;
- Directs or coordinates non-agency employees at . . . complex sites;
- Represents agency and testifies at legal or public hearings or conferences;
- Serves as a historical resource or technical expert in one or more subject areas;
- Serves as project manager and coordinator on complex projects;
- Project administration and environmental technical assistance on high priority environmental issues requiring technical expertise.

Your position provides technical expertise on regulatory and land use issues, evaluates project impacts, develops mitigation plans, and ensures consistency throughout the planning process of capital projects affecting state parks. While some of your duties and responsibilities may be performed at a higher level, the overall scope and diversity of the work assigned to your position best fit the Environmental Specialist 4 classification.

Appeal Rights

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides, in relevant part, the following:

An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to . . . the Washington personnel resources board Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located at 600 South Franklin, Olympia, Washington. The main telephone number is (360) 664-0388, and the fax number is (360) 753-0139.

If no further action is taken, the Director's determination becomes final.

c: Joe Vidales, PARKS
George Price, PARKS
Lisa Skriletz, DOP

Enclosure: List of Exhibits

MARK SCHULZ v. PARKS & RECREATION COMMISSION

ALLO-08-061

Exhibit List

A. Filed by Mark Schulz September 10, 2008:

1. Director's Review Request form.
2. PARKS' allocation determination August 11, 2008.
3. Assessment of observed Job Performance from Mike Allen, October 5, 2007.
4. Classification Questionnaire (CQ) signed by Mark Schulz on October 5, 2007, and by Mike Allen on April 18, 2008.

B. File by Parks and Recreation November 17, 2008

1. Page one of CQ dated stamped October 31, 2007.
2. Note from Mike Allen regarding change to proposed class title, dated April 18, 2008.
3. Classification Questionnaire dated April 18, 2008
4. PARKS' allocation determination August 11, 2008 (Same as A-2 above).
5. Email from Mark Schulz regarding proposed meeting to clarify job duties August 28, 2008
6. Email from Mike Allen regarding additional information CQ for review dated September 30, 2008
7. Additional information CQ to support Environmental Planner 4 dated October 9, 2008
8. Email from Joe Vidales regarding review of additional information CQ dated November 12, 2008
9. Class Specification for Environmental Specialist 4
10. Class Specification for Environmental Planner 4
11. Employee's Request for Directors Review (Same as A-1 above).

C. Employee Exhibit Packet, received from PARKS on November 17, 2008:

1. Chris Parsons' (supervisor) letter to Joe Vidales (Parks HR)
2. Reaffirmation of formal SEPA Responsible Official Designation
3. Ecology Focus Sheet – Washington State Environmental Policy Act
4. SEPA document: Pasco to Fish Lake Trial Land Classification and Master plan
5. SEPA document: Sun Lakes State Park Master Plan
6. SEPA document: Riverside State Park Land Classification
7. SEPA document: Riverside State Park Forest Fuels Reduction Plan
8. SEPA document: Mt. Spokane State Park Land Classification
9. Pearygin Lake Planned Development Rezone Application
10. Centennial Trial West Link Habitat Management Plan
11. Riverside State Park Bald Eagle Nesting Territory Management Plan
12. Sun Lakes – Dry Falls State Park Habitat Management Plan
13. Sun Lakes State Park Master Planned Resort Designation – Letter to Grant County
14. NEPA Documents: Rocky Reach Trail